



Australian Government
Repatriation Medical Authority

EXPLANATORY STATEMENT

**STATEMENT OF PRINCIPLES CONCERNING
BIPOLAR DISORDER
(BALANCE OF PROBABILITIES) (NO. 54 OF 2018)**

VETERANS' ENTITLEMENTS ACT 1986
MILITARY REHABILITATION AND COMPENSATION ACT 2004

1. This is the Explanatory Statement to the *Statement of Principles concerning bipolar disorder (Balance of Probabilities)* (No. 54 of 2018).

Background

2. The Repatriation Medical Authority (the Authority), under subsection 196B(8) of the *Veterans' Entitlements Act 1986* (the VEA), repeals Instrument No. 28 of 2009 (Federal Register of Legislation No. F 2009L01595) determined under subsection 196B(3) of the VEA concerning **bipolar disorder**.
3. The Authority is of the view that on the sound medical-scientific evidence available it is more probable than not that **bipolar disorder** and **death from bipolar disorder** can be related to particular kinds of service. The Authority has therefore determined pursuant to subsection 196B(3) of the VEA a Statement of Principles concerning **bipolar disorder** (Balance of Probabilities) (No. 54 of 2018). This Instrument will in effect replace the repealed Statement of Principles.

Purpose and Operation

4. The Statement of Principles will be applied in determining claims under the VEA and the *Military Rehabilitation and Compensation Act 2004* (the MRCA).
5. The Statement of Principles sets out the factors that must exist, and which of those factors must be related to the following kinds of service rendered by a person:
 - eligible war service (other than operational service) under the VEA;
 - defence service (other than hazardous service and British nuclear test defence service) under the VEA;
 - peacetime service under the MRCA,

before it can be said that, on the balance of probabilities, bipolar disorder or death from bipolar disorder is connected with the circumstances of that service. The Statement of Principles has been determined for the purposes of both the VEA and the MRCA.

6. This Instrument results from an investigation notified by the Authority in the Government Notices Gazette of 19 October 2016 concerning bipolar disorder in accordance with section 196G of the VEA. The investigation involved an examination of the sound medical-scientific evidence now available to the Authority, including the sound medical-scientific evidence it has previously considered.

7. The contents of this Instrument are in similar terms as the repealed Instrument. Comparing this Instrument and the repealed Instrument, the differences include:
- adopting the latest revised Instrument format, which commenced in 2015;
 - specifying a day of commencement for the Instrument in section 2;
 - revising the definition of 'bipolar disorder' in subsection 7(2);
 - revising the factor in subsection 9(1)(a) concerning 'a category 1A stressor', by inclusion of a note, now for bipolar I disorder, bipolar II disorder, cyclothymic disorder, major depressive episode with mixed features, other specified bipolar and related disorder and unspecified bipolar and related disorder only, for clinical onset only;
 - revising the factor in subsection 9(1)(b) concerning 'a category 1B stressor', by inclusion of a note, now for bipolar I disorder, bipolar II disorder, cyclothymic disorder, major depressive episode with mixed features, other specified bipolar and related disorder and unspecified bipolar and related disorder only, for clinical onset only;
 - revising the factor in subsection 9(1)(c) concerning 'a category 2 stressor', by inclusion of a note, now for bipolar I disorder, bipolar II disorder, cyclothymic disorder, major depressive episode with mixed features, other specified bipolar and related disorder and unspecified bipolar and related disorder only, for clinical onset only;
 - revising the factor in subsection 9(1)(d) concerning 'death of a significant other', by inclusion of a note, now for bipolar I disorder, bipolar II disorder, cyclothymic disorder, major depressive episode with mixed features, other specified bipolar and related disorder and unspecified bipolar and related disorder only, for clinical onset only;
 - revising the factor in subsection 9(1)(e) concerning 'being within 90 days postpartum', now for bipolar I disorder, bipolar II disorder, cyclothymic disorder, major depressive episode with mixed features, other specified bipolar and related disorder and unspecified bipolar and related disorder only, for clinical onset only;
 - new factor in subsection 9(1)(f) concerning 'alcohol use disorder or substance use disorder', for bipolar I disorder, bipolar II disorder, cyclothymic disorder, major depressive episode with mixed features, other specified bipolar and related disorder and unspecified bipolar and related disorder only, for clinical onset only;
 - new factor in subsection 9(1)(g) concerning 'a disorder of mental health', for bipolar I disorder, bipolar II disorder, cyclothymic disorder, major depressive episode with mixed features, other specified bipolar and related disorder and unspecified bipolar and related disorder only, for clinical onset only;
 - revising the factor in subsection 9(2)(a) concerning 'taking a drug, or a drug from a class of drugs', now for substance/medication-induced bipolar and related disorder only, for clinical onset only;
 - revising the factor in subsection 9(2)(b) concerning 'taking a drug which is associated in the individual with the development of symptoms of bipolar disorder', now for substance/medication-induced bipolar and related disorder only, for clinical onset only;
 - revising the factor in subsection 9(2)(c) concerning 'antidepressant drug therapy' by the inclusion of 'antiepileptic drug therapy', now for substance/medication-induced bipolar and related disorder only, for clinical onset only;

- new factor in subsection 9(2)(d) concerning 'alcohol use disorder or substance use disorder', now for substance/medication-induced bipolar and related disorder only, for clinical onset only;
- new factor in subsection 9(3) concerning 'an endocrine, cardiovascular, respiratory, metabolic, infectious or neurological disorder', for bipolar and related disorder due to another medical condition only, for clinical onset only;
- revising the factor in subsection 9(4) concerning 'a category 1A stressor', by inclusion of a note, for clinical worsening;
- revising the factor in subsection 9(5) concerning 'a category 1B stressor', by inclusion of a note, for clinical worsening;
- revising the factor in subsection 9(6) concerning 'a category 2 stressor', by inclusion of a note, for clinical worsening;
- revising the factor in subsection 9(7) concerning 'death of a significant other', by inclusion of a note, for clinical worsening;
- new factor in subsection 9(9) concerning 'a disorder of mental health', for clinical worsening;
- new factor in subsection 9(10) concerning 'taking a drug, or a drug from a class of drugs', for clinical worsening;
- revising the factor in subsection 9(11) concerning 'taking a drug which is associated in the individual with the worsening of symptoms of bipolar disorder', for clinical worsening;
- revising the factor in subsection 9(12) concerning 'antidepressant drug therapy' by the inclusion of 'antiepileptic drug therapy', for clinical worsening;
- revising the factor in subsection 9(13) concerning 'a medical condition', by inclusion of a note, for clinical worsening;
- revising the factor in subsection 9(14) concerning 'severe childhood abuse', for clinical worsening;
- revising the factor in subsection 9(16) concerning 'electroconvulsive therapy', for clinical worsening;
- revising the factor in subsection 9(17) concerning 'bright light therapy', for clinical worsening;
- new factor in subsection 9(18) concerning 'deep brain stimulation', for clinical worsening;
- new factor in subsection 9(19) concerning 'vagus nerve stimulation', for clinical worsening;
- deleting the factors concerning 'drug dependence or drug abuse' and 'alcohol dependence or alcohol abuse' as they are now covered by the factor in subsection 9(1)(f) concerning 'alcohol use disorder or substance use disorder' for clinical onset, and the factor in subsection 9(9) concerning 'a disorder of mental health' for clinical worsening;
- deleting the factors concerning 'a clinically significant anxiety spectrum disorder' as they are now covered by the factors in subsections 9(1)(g) & 9(9) concerning 'a disorder of mental health';
- new definitions of 'bipolar and related disorder due to another medical condition', 'cyclothymic disorder', 'corpse', 'DSM-5', 'hypomanic episode', 'major depressive episode', 'major depressive episode with mixed features', 'manic episode', 'medical condition is a direct physiological cause of the mood symptoms', 'MRCA', 'other specified bipolar and related disorder and unspecified bipolar and related disorder', 'specified list of drugs', 'Specified List 1 of clinically significant disorders of mental health', 'Specified List 2 of

clinically significant disorders of mental health', 'substance/medication-induced bipolar and related disorder' and 'VEA' in Schedule 1 - Dictionary;

- revising the definitions of 'bipolar I disorder', 'bipolar II disorder', 'category 1A stressor', 'category 1B stressor', 'category 2 stressor', 'eyewitness', 'medical condition as specified' and 'relevant service' in Schedule 1 - Dictionary; and
- deleting the definitions of 'a clinically significant anxiety spectrum disorder', 'a drug from the class of drugs in specified list 1', 'a drug from the class of drugs in specified list 3', 'a drug in specified list 2', 'a drug in specified list 4', 'bipolar disorder not otherwise specified', 'cyclothymia', 'DSM-IV-TR', 'mood disorder due to a general medical condition with manic or mixed features', 'substance-induced mood disorder with manic or mixed features' and 'the general medical condition is a direct physiological cause of the mood symptoms'.

Incorporation

8. This Instrument incorporates by reference *the Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5), Arlington, VA, American Psychiatric Association, 2013. A copy of this document is available from the offices of the Repatriation Medical Authority, Level 8, 259 Queen St, Brisbane, Queensland 4000, by contacting the Registrar on telephone (07) 3815 9404.

Consultation

9. Prior to determining this Instrument, the Authority advertised its intention to undertake an investigation in relation to bipolar disorder in the Government Notices Gazette of 19 October 2016, and circulated a copy of the notice of intention to investigate to a wide range of organisations representing veterans, service personnel and their dependants. The Authority invited submissions from the Repatriation Commission, organisations and persons referred to in section 196E of the VEA, and any person having expertise in the field. No submissions were received for consideration by the Authority during the investigation.

Human Rights

10. This instrument is compatible with the Human Rights and Freedoms recognised or declared in the International Instruments listed in Section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights follows.

Finalisation of Investigation

11. The determining of this Instrument finalises the investigation in relation to bipolar disorder as advertised in the Government Notices Gazette of 19 October 2016.

References

12. A list of references relating to the above condition is available to any person or organisation referred to in subsection 196E(1)(a) to (c) of the VEA. Any such request must be made in writing to the Repatriation Medical Authority at the following address:

The Registrar
Repatriation Medical Authority
GPO Box 1014
BRISBANE QLD 4001



Australian Government
Repatriation Medical Authority

Statement of Compatibility with Human Rights

(Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011)

Instrument No.: **Statement of Principles No. 54 of 2018**

Kind of Injury, Disease or Death: **Bipolar disorder**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

1. This Legislative Instrument is determined pursuant to subsection 196B(8) of the *Veterans' Entitlements Act 1986* (the VEA) for the purposes of the VEA and the *Military Rehabilitation and Compensation Act 2004* (the MRCA). Part XIA of the VEA requires the determination of these instruments outlining the factors linking particular kinds of injury, disease or death with service such being determined solely on the available sound medical-scientific evidence.
2. This Legislative Instrument:-
 - facilitates claimants in making, and the Repatriation Commission in assessing, claims under the VEA and the MRCA respectively, by specifying the circumstances in which medical treatment and compensation can be extended to eligible persons who have bipolar disorder;
 - facilitates the review of such decisions by the Veterans' Review Board and the Administrative Appeals Tribunal;
 - outlines the factors which the current sound medical-scientific evidence indicates must exist before it can be said that, on the balance of probabilities, bipolar disorder is connected with the circumstances of eligible service rendered by a person, as set out in clause 5 of the Explanatory Statement;
 - replaces Instrument No. 28 of 2009; and
 - reflects developments in the available sound medical-scientific evidence concerning bipolar disorder which have occurred since that earlier instrument was determined.
3. The Instrument is assessed as being a technical instrument which improves the medico-scientific quality of outcomes under the VEA and the MRCA.

Human Rights Implications

4. This Legislative Instrument does not derogate from any human rights. It promotes the human rights of veterans, current and former Defence Force members as well as other persons such as their dependents, including:

- the right to social security (Art 9, *International Covenant on Economic, Social and Cultural Rights*; Art 26, *Convention on the Rights of the Child* and Art 28, *Convention on the Rights of Persons with Disabilities*) by helping to ensure that the qualifying conditions for the benefit are 'reasonable, proportionate and transparent'¹;
- the right to an adequate standard of living (Art 11, ICSECR; Art 27, CRC and Art 28, CRPD) by facilitating the assessment and determination of social security benefits;
- the right to the enjoyment of the highest attainable standard of physical and mental health (Art 12, ICSECR and Art 25, CRPD), by facilitating the assessment and determination of compensation and benefits in relation to the treatment and rehabilitation of veterans and Defence Force members;
- the rights of persons with disabilities by facilitating the determination of claims relating to treatment and rehabilitation (Art 26, CRPD); and
- ensuring that those rights "will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Art 2, ICESCR).

Conclusion

This Legislative Instrument is compatible with human rights as it does not derogate from and promotes a number of human rights.

Repatriation Medical Authority

¹ In General Comment No. 19 (The right to social security), the Committee on Economic, Social and Cultural Rights said (at paragraph 24) this to be one of the elements of ensuring accessibility to social security.